

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL INSURANCE CO.,

Plaintiff,

- against -

LUXURY TRANSPORTATION MANAGEMENT
INC., et al.,

Defendants.
-----X

ORDER

07 CV 608 (RJD) (JO)

DEARIE, Chief Judge.

This Court has reviewed the Report & Recommendation of Magistrate Judge James Orenstein, dated March 19, 2009. No objections have been filed. The Court adopts the Report & Recommendation in its entirety.

The previous order granting default (Dkt. No. 30) is hereby vacated as to defendants Edward Sorin, Big A Brokerage Corp. and Aleksandr Savranskiy, plaintiff's motion for default judgment is denied as to these defendants, and the Complaint is dismissed with leave to amend in accordance with Judge Orenstein's Report & Recommendation. See also Liberty Mut. Ins. Co. V. First Brighton Transp., Inc., No. 07-0715, 2008 WL 1787684, at *3-5 (E.D.N.Y. Apr. 18, 2007) (permitting opportunity to amend). Plaintiff shall serve and file an amended complaint within 30 days of this order.

The previous order granting default is likewise vacated and plaintiff's Complaint is dismissed with prejudice as to defendants Boris Kurbatsky¹ and Jose Rodriguez, in light of both

¹The Court will also dismiss Kurbatsky's cross-claim against Liberty (Dkt. No. 2), seeking \$10,000,000 for "mental anguish, mental and health distress, and defamation of character," for failure to prosecute.

the procedural deficiencies discussed in Judge Orenstein's Report & Recommendation,² and plaintiff's failure to prosecute its claims against these individuals.

The Court awards no damages on plaintiff's remaining claims against Luxury Transportation Management, Inc. and Boris Kurbatsky Insurance Brokerage Corp. Plaintiff has failed to prove damages to a reasonable certainty, despite ample opportunity to develop a record of its losses traceable to the alleged scheme.

SO ORDERED.

Dated: Brooklyn, New York
April 15, 2009

s/ Judge Raymond J. Dearie


RAYMOND J. DEARIE
United States District Judge

²Liberty never served or sought default judgment against defendant Jose Rodriguez. See Report & Recommendation at 2 n.1. Liberty has enjoyed more than sufficient notice of these procedural deficiencies, and therefore his claims may be dismissed pursuant to Rule 4(m). See Fed. R. Civ. P. 4(m). Defendant Kurbatsky has filed an Answer, making plaintiff's request for default judgment improper. See Dkt. No. 2, Report & Recommendation at 8-9.